



THE 2016 FORECLOSURE / VACANT PROPERTY LAW

Foreclosure / Vacant Property Law

On June 23, 2016, Governor Andrew M. Cuomo signed legislation to address the challenges posed by mortgaged vacant and abandoned properties ("zombie properties") to communities throughout the State of New York. To address these challenges, the law imposes various requirements on mortgage note holders ("mortgagees") including, an obligation to inspect. Maintain and register zombie properties.

What is a Zombie Property (RPAPL 1309)?

In order to trigger the maintenance and registration obligations, a property must first meet the legal definition of "zombie property", which can happen in one of three ways:

- Mortgagee Inspections—The law requires mortgagees to conduct occupancy inspections, every 25-35 days, of properties associated with loans that are at least 90-days delinquent. If the mortgagee finds that at each of three consecutive inspections (1) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (2) the property is not being maintained in a manner consistent with specific provisions of the New York State Maintenance Code then the property is deemed to be a "zombie."
- Court or Locality Determination—A property to be deemed a "zombie property" after a court or other appropriate state or local government entity has made a formal determination of vacancy, following due notice to the borrower.
- Borrower/Owner Affidavits—If each borrower on the mortgage and owner of the property has issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy.



New York State Department of Financial Services:

Zombie Hotline: 1-800-342-3736

DFS Website to file a maintenance complaint:

<http://www.dfs.ny.gov/consumer/fileacomplaint.htm>



Four (4) Basic Obligations on Mortgagees

- To inspect properties associated with a loan that is 90 days delinquent every 25 to 35 days to assess whether the property meets the definition of vacant & abandoned.
- To register with the NYS Department of Financial Services all properties that are determined to be vacant & abandoned.
- To secure and maintain, according to the maintenance requirements detailed in RPAPL 1308 (Real Property Actions & Proceedings Law)
- To report, on a quarterly basis, on the dates on which the inspections of properties associated with a delinquent loan were performed and, if that property has been identified as vacant and abandoned, provide a general overview of the maintenance work performed on the property during the preceding quarter.

What is included in the Obligation to Maintain (RPAPL 1308)?

Once a property has been deemed a “zombie property”, the mortgagee must take necessary steps to ensure that the property is secured and maintained, in order to minimize public safety risks and related blight to the neighborhood and surrounding community.

What is the “Zombie Property” Registry (RPAPL 1310)?

The law requires mortgagees to register “zombie properties” with the New York State Department of Financial Services (NYSDFS) for inclusion in the “zombie property” registry (ZPR) within twenty-one (21) business days of learning that the vacancy status and provide any updates no later than thirty (30) days after learning of them. The information submitted to the NYSDFS includes: (i) the current name, address and contact information of the party responsible for maintaining the vacant property; (ii) whether a foreclosure action has been filed for the property in question and, if so, that date on which it was commenced; and (iii) the last known address and contact information for the mortgagor(s).

How can the NYSDFS help?

Filing a maintenance complaint—Maintenance complaints should be filed online through the NYSDFS’ department website by going to <http://www.dfs.ny.gov/consumer/fileacomplaint.htm> and clicking on the “consumer compliant form” button.

The NYSDFS will then seek to determine whether the property is subject to a mortgage, and, if so, identify the party responsible for inspection, securing and maintaining the property in question. Once identified, the NYSDFS will contact that party to ensure that it is complying with its obligation.



Vacant & Abandoned Properties

Contacts:

*NYS Department of
Financial Services
Zombie Hotline*

(800) 342-3736

*Town of Cheektowaga
Office of Community &
Economic Development*

(716) 897-7200

*Town of Cheektowaga
Office of Housing &
Neighborhood Preser-
vation*

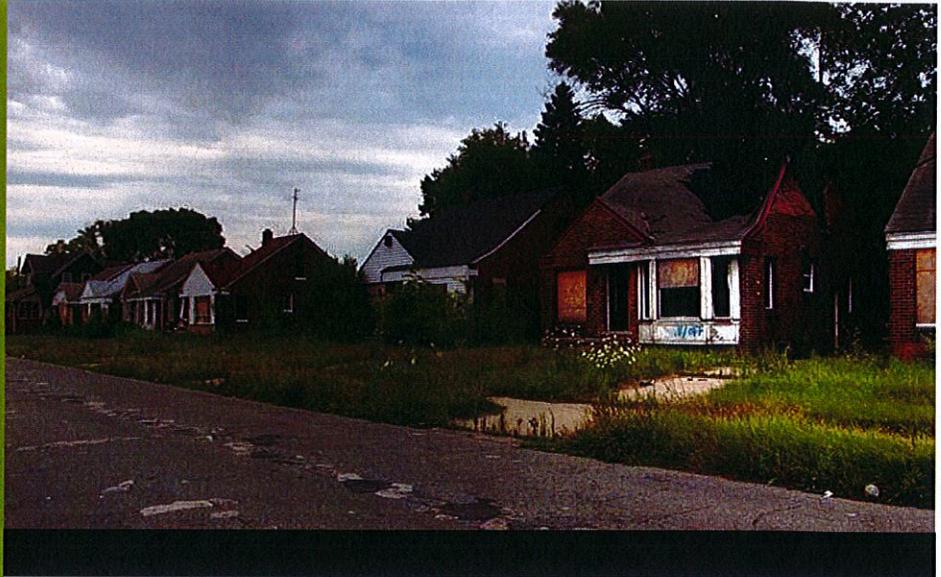
(716) 897-7281

*The Western New York
Law Center*

(716) 855-0203

*Belmont Housing
Resources for WNY*

(716) 884-7791



Additional Help for Homeowners

The Town of Cheektowaga has contracted with the Western New York Law Center and Belmont Housing Resources to aid homeowners in preventing foreclosures.

The Western New York Law center (WNYLC) will track lis pendens filings affecting residential properties in Cheektowaga and will send letters and postcards to said homeowners facing mortgage foreclosure. The postcards will educate people regarding free services provided regarding foreclosure, bankruptcy and consumer debt.

- Foreclosure Questions? Call 716-855-0203 ext.118 / tax foreclosure ext.124
- Bankruptcy Questions? Call 716-855-0203 ext. 121
- Consumer Debt Questions? Call 716-855-0203 ext. 122

Belmont Housing Resources will provide foreclosure prevention counseling to homeowners in Cheektowaga. Counseling will include:

- Budget and credit review
- Identifying benefits and income supports the homeowner/family may qualify for
- Gathering required documents and completing loss mitigation application
- Contact with lender on homeowner's/family's behalf
- Submission of loan modification packet
- Negotiation with lender and holding lender accountable to Federal and State regulations
- Once mortgage workout is offered, reviewing agreement with homeowner/family and assisting with execution/notarization of agreement

If the homeowner/family is unable to keep the home, a Belmont counselor helps the homeowner/family develop an exit strategy, which may include outright sale, Short Sale, Deed in Lieu of foreclosure, and locating affordable rental opportunities.